IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9826 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAKESH ALIAS KALIYO NAGINBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9826 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HB PUNANI ASST GOVERNMENT PLEADER for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 22/12/2004

ORAL JUDGEMENT

#. Heard Ms.S.G.Patel, learned advocate appearing for

the petitioner and Ms.H.B.Punani, learned AGP for the other side.

#. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 21.6.2004 passed by the Police Commissioner, Surat city under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

#. The petitioner is branded as "a Bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in offences registered under the Bombay Prohibition Act. While passing the order of preventive detention under challenge, the detaining authority has mainly considered the fact of registration of an offence by Rander Police Station punishable under Sections 66(1) B, 65, E, A, and 81 of the Bombay Prohibition Act.

#. It is also pointed out by the learned advocate Ms.Patel that the petitioner was arrested by the Investigating Agency on 15th May, 2004 and thereafter, he was enlarged on bail by the competent Court on that very day. So, the order of detention could have been passed promptly, especially, when the statements of two independent witnesses were very well there before the authority on 16th May, 2004, the day on which the petitioner was enlarged on bail. However, for the reasons best known to the sponsoring authority, these statements were not placed for verification before the detaining authority for more than one month and witnesses were taken for verification on 17th June, 2004. The delay caused of one month would go to the root of the validity of the order as per the ratio of the decision of this Court (Coram : J.R.Vora, J.) in Special Civil Application No.10182 of 2003 decided on 26.8.2003, it is not necessary to reproduce the relevant para-6 of the decision but the Court has to agree that the observations would certainly help the petitioner.

The order under challenge is assailed on various grounds. However, learned advocate Ms.Patel has mainly placed reliance on the ground that the ratio of the decision in case of SOHANLAL SURAJARAM VISNOY v. STATE OF GUJARAT, 2004(2) GLR 1051, would also squarely help the petitioner because this is a case of solitary incident.

#. The present petitioner is entitled to agitate one

more ground that he should be set at liberty on the ground of parity as the co-detenu of the present petitioner has been set at liberty today while allowing Special Civil Application No.8052 of 2004.

#. For short, there requires no further detail discussion on other points raised in the petition and the Court finds that the order of detention is not sustainable in the eye of law.

#. The petition succeeds and the same is allowed. The order of detention dated 21.6.2004 is vitiated and the same is hereby quashed and set aside. The detenu - RAKESH ALIAS KALIYO NAGINBHAI PATEL who has been detained at Porbandar Special Jail at Porbandar be set at liberty forthwith if not required in any other case.

Rule is made absolute accordingly. No order as to costs.

Direct Service is permitted.

Date :22/12/2004 [C.K.Buch, J.]

#kailash#